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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/079,729	02/21/2002	Frederick Browne Gregg	64907_DIV	7503

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CHRISTOPHER F. REGAN
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
P.O. Box 3791
Orlando, FL 32802-3791

EXAMINER

KILKENNY, TODD J

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

eb10

Office Action Summary	Application No. 10/079,729	Applicant(s) GREGG ET AL.	
	Examiner Todd J. Kilkenney	Art Unit 1733	

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18 and 27-40 is/are rejected.
- 7) ☒ Claim(s) 19-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 9-17-03 have been fully considered but they are not persuasive.

In regard to independent claim 18, again the primary reference to King suggests casting a gas concrete into convenient sized cubes, but fails to provide any disclosure as to means employed. King's silence would have motivated one of ordinary skill in the art to look to the state of the art to find known means employed to form cast cubes comprising gas concrete. The secondary reference to Urmston, directed to aerated (i.e. gas) concrete formation suggests that cubes like the dimensions suggested by King are cast in autoclaves. As to Mathieu, the suggestion to deposit a cementitious slurry onto face layer is used as evidence in the wallboard art to suggest known manufacturing of wallboards includes cutting both the cementitious core and face layer after said face layer and cementitious layer are attached and after said cementitious layer has cured. One of ordinary skill in the art would have been motivated to incorporate this arrangement of steps to achieve continuous operation, regardless of the state of the core when introducing the face layer (i.e. slurry or a semi-hardened cast panel).

Again, in regard to independent claim 27, the primary reference to Urmston positively discloses forming aerated concrete building units wherein the building units are cured in an autoclave. The secondary references are combined with Urmston to render obvious constructing the generic autoclaved aerated concrete "building unit" of Urmston into wallboard, wherein King is the evidence provided that gas concrete is

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used to form wall panels with the motivation being that gas concrete cores in wall panels are lighter in weight and less expensive than conventional drywall. Being motivated by King to employ the aerated concrete of Urmston to form wall panels as the generic "building units", one would be expected to use ordinary skill to form the suggested wall panels of Urmston in view of King and therefore would be expected to look to teachings such as in the additional secondary references. That is, one of ordinary skill in the art would have been motivated to look to the wallboard art to fill in the silence of Urmston and King to form the wall panels as suggested. Emerson has been provided as disclosing to attach face layers onto cement core panels before curing said core panels. Teare and Clear have both been provided as evidence to suggest it is known in manufacturing wallboards panels that cementitious core panels are cut into wallboard lengths after face layers have been attached thereto, but prior to curing.

Although, none of the additional secondary references positively disclose autoclaving as curing means, such is already disclosed by the primary reference as the methodology required to cure the aerated concrete building unit.

Furthermore, the examiner's interpretation of Urmston is maintained. The examiner believes Urmston suggests cutting after autoclaving as opposed to the previous teachings to wire slice prior to autoclaving only when the block includes coarse aggregate. However, Urmston clearly suggests coarse aggregate can or cannot be used. Therefore, one of ordinary skill reading Urmston would readily appreciate the suggestion of cutting prior to curing as was known in the art, is effective when not employing coarse aggregate.

In regard to independent claim 34, Stipek et al (US 4,966,7390), Kato et al (JP 10-6317) and optionally Miller (US 5,350,554) render obvious autoclaving the cementitious boards of Mathieu to cure and cutting prior to autoclaving, wherein the cementitious boards of Mathieu are gas entrained.

In response to applicant's contention that the secondary references to Teare and Clear do not teach curing ovens, but rather curing areas, it is noted that Teare and Clear in this regard are applied to suggest cutting means upstream of curing means, regardless of the curing means employed.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over King (US 5,002,620) in view of Urmston (US 4,124,699) and further in view of Mathieu (US 6,187,409). The rejection of record (Paper No. 8) is maintained and hereby incorporated as reference.

4. Claims 27 – 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urmston (US 4,124,669) in view of King (US 5,002,620), Emerson (US 1,439,954), Mathieu (US 6,187,409), Teare (US 4,298,413) and Clear (US 4,203,788). The rejection of record (Paper No. 8) is maintained and hereby incorporated as reference.

5. Claims 34 – 37 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mathieu et al (US 6,187,409) in view of Urmston (US 4,124,669), Stipek et al (US 4,966,739), Kato et al (JP 10-6317; newly cited) and optionally Miller (US 5,350,554). The rejection of record (Paper No. 8) is maintained and hereby incorporated as reference.

6. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mathieu (US 6,187,409) in view of Urmston (US 4,124,669), Stipek et al (US 4,966,739), Kato et

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al (JP 10-6317) and optionally Miller (US 5,350,554) as applied to claim 34 above, and further in view of Pace (US 4,154,040) and/or Lawlis et al (US 4,065,333). The rejection of record (Paper No. 8) is maintained and hereby incorporated as reference.

7. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mathieu (US 6,187,409) in view of Urmston (US 4,124,669), Stipek et al (US 4,966,739), Kato et al (JP 10-6317) and optionally Miller (US 5,350,554) as applied to claim 34 above, and further in view of King (US (US 5,002,620). The rejection of record (Paper No. 8) is maintained and hereby incorporated as reference.

Allowable Subject Matter

8. Claims 19 – 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Reasons for allowability are provided in the previous office action.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd J. Kilkenny** whose telephone number is **(703) 305-6386**, or if attempting to contact after December 18, 2003 (571) 272-1219. The examiner can normally be reached on Mon - Fri (9 - 5).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

TJK

TJK


JEFF H. AFTERGUT
PRIMARY EXAMINER
GROUP 1300